

REMARKS

The Office Action dated March 1, 2010 has been received and reviewed. This response, submitted along with a Request for Continued Examination (RCE), is directed to that action.

Claims 3, 4, 8, 10, 12-15, 19, 31-35 and 37 have been amended, and claim 1-2 and 7 have been cancelled. Support for the claim amendments can be found throughout the specification and in claim 7 as originally filed. No new matter has been added.

The applicants respectfully request reconsideration in view of the foregoing amendments and the following remarks.

Claim Rejections- 35 U.S.C. §102/103

The Examiner rejected claims 1, 2, 8, 10-15, 19-23, 26, 28-32 and 34 under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Foley et al. (WO 00/63342); and claims 35-38 under 35 U.S.C. §103(a) as obvious over Foley. The applicants respectfully submit that the amendments to claims in this response render these rejections moot.

Claim Rejections- 35 U.S.C. §103

The Examiner rejected claims 1-8, 10-15, 19-22, 29-32 and 34-42 under 35 U.S.C. §103(a) as obvious over Broeckx (WO 00/47707); and claim 33 as obvious over Broeckx in view of Foley. The applicants respectfully traverse these rejections.

While the Examiner contends that it would have been obvious to modify Broeckx in order to achieve the presently claimed invention, the applicants submit that a person of ordinary skill in the art would have had to make too many modifications to the prior art to achieve the present invention, and therefore a *prima facie* case of obviousness cannot be established.

The differences between Broeckx and the present invention are too numerous and too disparate to be considered within the scope of the level of skill of an ordinary artisan. In particular, the differences between Broeckx and the present invention include (1) the water content of the gel; (2) the salt content of the non-aqueous component; (3) the interaction of the radiation emitted by the gel and colored particles and solids forming a third color; (4) the transmittance of the composition and migration speed of the particles in the gelled composition; and (5) the particle size of the secondary particles. A skilled artisan, therefore, would have to make no less than five *different* modifications of Broeckx in order to achieve the presently claimed invention.

The Examiner stated, with respect to the salt and water content, that it would have been obvious to optimize these variables. However, the Examiner has not provided any reasoning as to *why* a skilled artisan would have modified Broeckx to “optimize” these variables. There must be some motivation in the prior art or the knowledge of a person of ordinary skill in the art to modify a variable.

Moreover, the Examiner stated that Broeckx does not explicitly disclose the interaction of the radiation emitted by the gel and colored particles to form a third (or fourth) color, but that it would have been obvious to a skilled artisan to expect that the gelled composition of Broeckx to exhibit similar, if not the same, characteristics because similar ingredients have been used. The applicants strongly disagree with this reasoning because there is nothing in Broeckx to even suggest that the gel and particles are *different colors*, which may interact to form a third color. Furthermore, Broeckx fails to even teach that the gel is a color, only that it is clear or translucent. A clear or translucent gel will not interact with a particle of a different color in order form a third color.

A skilled artisan, therefore, would first have to modify Broeckx's water content and salt content. Then, she would need to use different color gel and particles, at the same time making sure that the colors exhibited a transmittance within the claimed range. Then, the migration speed of the particles would need to be modified. Finally, she would need to select secondary particles that are less than 50 microns. The applicants submit that there are just too many modifications that a skilled artisan would need to undertake in order to achieve the present invention after reading Broeckx to be considered obvious.

The Examiner also rejected claims 1, 3-8, 10-15, 19-32, 34-36, and 39-42 were rejected under 35 U.S.C. § 103(a) as obvious over Corring et al. (US 5,141,664). The applicants respectfully traverse this rejection.

The Examiner notes that Corring teaches a composition that fails to teach a detergent composition having a gel with first color and primary particles having a second color such that the radiation transmitted by the gel having a first color interacts with the radiation from the second color of the primary particles to produce a third color. The Examiner once again reasons that it would have been obvious to modify Corring by adding dyes in order to achieve the presently claimed invention.

In response, the applicants submit that, at the time of the invention, there was neither a teaching to do so nor an expectation of success that doing so would provide a workable product. There is no reason why a skilled artisan would have modified Corring, and any suggestion to do so is clearly based on an impermissible hindsight reconstruction of the presently claimed invention. Accordingly, without any motivation to modify Corring, the applicants submit that a *prima facie* case of obviousness cannot be established, and respectfully request that the Examiner withdraw these rejections.

The applicants submit that the claims are now in condition for allowance, and such favorable action is respectfully requested. If any issues remain, the resolution of which can be advanced through a telephone conference, the Examiner is invited to contact the applicant's attorney at the phone number listed below.

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CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefore. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,

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